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#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re application of:

John C. Myers

Serial No. 09/707,987

Filed: November 8, 2000

For: TELEPHONE BASED ACCESS TO

**INSTANT MESSAGING** 

Attorney Docket No. 22171.309

Customer No. 27683

Group Art Unit: 2645

Examiner: Gauthier, Gerald

### **TRANSMITTAL**

RECEIVED

Box Non-Fee Amendment Commissioner for Patents Washington, D.C. 20231 MAR 1 2 2003

Technology Center 2600

### • Dear Sir:

Enclosed are the following regarding the above-identified patent application:

- 1. Amendment in response to December 4, 2002 Office Action;
- 2. Transmittal sheet in duplicate; and
- 3. Return postcard.

The Commissioner is hereby authorized to charge payment of any further fees associated with any of the papers submitted herewith or to credit any overpayment to Deposit Account No. 08-1394.

Respectfully submitted,

Ling 2. Blis

Timothy F. Bliss Registration No. 50,925

Dated: March 4, 2003

HAYNES AND BOONE, L.L.P. 901 Main Street, Suite 3100 Dallas, Texas 75202-3789

Telephone: 972 739-8638 Facsimile: 972 692-9101

File: 22171.153

A / DOD PATENT TRADEMARK OFFICE Gayle Conner

20231 on March 4, 2003

I hereby certify that this correspondence is being

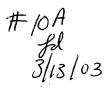
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# **RESPONSE**

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Box Non Fee Amendment Commissioner For Patents Washington, DC 20231

Technology Center 2600

Dear Sir:

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In response to the Office Action mailed December 4, 2002, please consider the following remarks:

#### REMARKS

Claims 1-54 are presently pending.

## Rejections under 35 U.S.C. § 103

Claims 1-54 stand rejected under §103(a) as being unpatentable over U.S. Patent No. 5,848,134 to Sekiguchi et al. ("Sekiguchi") in view of U.S. Patent No. 6,212,548 to DeSimone ("DeSimone"). Applicant respectfully traverses these rejections, and reconsideration of Applicant's pending claims is respectfully requested.

# 1. <u>Hypothetical Combination does not Achieve Claimed Subject Matter.</u>

As the PTO provides in MPEP §2143, "[t]o establish a prima facie case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." Furthermore, under MPEP §2142, "[i]f the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness." It is submitted that the Office action does not factually